ACCUSPEC ELECTRONIC SERVICES, INC.,	:	IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
Plaintiff,	:	
v.	:	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC.,	:	C.A. No.: 03-394 E
Defendants	:	

DEFENDANT, LOGISTICS PLUS, INC.'S OPPOSITION TO THE PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL; MOTION FOR PRE-JUDGMENT INTEREST AND MOTION FOR RECONSIDERATION REGARDING CAUSE OF ACTION UNDER SECTION 14704 AND REQUEST FOR ASSESSMENT OF ATTORNEY'S FEES

AND NOW, comes the Defendant, LOGISTICS PLUS, INC., by and through its attorney, W. JOHN KNOX, ESQ. of THE TRAVIS LAW FIRM, and files its Opposing Response to the above-referenced motions of the Plaintiff. The following is stated in support thereof:

BACKGROUND

After a four-day trial in the above-captioned matter, a jury rendered a verdict for the Plaintiff in the amount of $21,000.00 to be collected from either Central Transport International, Inc. or Logistics Plus, Inc. The Plaintiff now seeks through the filing of four post-trial motions (1) judgment as a matter of law; (2) a new trial; (3) pre-judgment interest; and (4) a third consideration of its action under 49 U.S.C. §14704 for attorneys' fees. Each motion is addressed separately below:

MOTION FOR JUDGMENT AS A MATTER OF LAW

There is no support for the Plaintiff's motion for judgment as a matter of law or to mold the Jury's verdict. The primary basis for the Plaintiff's motion and requests is that there is no basis for the amount awarded by the jury. Yet, the jury instructions offered, discussed and approved by the Plaintiff clearly speak very generally to the jury and vest in the jury's hands ultimate discretion to award any amount they deem appropriate. Specifically, the Interrogatories state:

6. What amount, if any, is plaintiff entitled to recover from Central Transport?

$____________

7. What amount, if any, is plaintiff entitled to recover from Logistics Plus?

$____________

There are no preceding interrogatories which pose questions to the jury enabling them to arrive at one and only one figure. Rather, there is a blank line affording wide latitude to the jury to place a number they see fit for each defendant. Again, this form was the one proffered by the Plaintiff, to which it obviously had no objection. In Intermedical Supplies, Ltd. V. EBI Medical Systems, Inc., 181 F.3d 446, 463 (3d Cir. 1999), the Third Circuit ruled that the failure to object to the jury instructions and verdict sheet ultimately used by the jury waives such objection. Having failed to do so, the Plaintiff here cannot not object after the fact.

Clearly, the determination of damages is a determination of fact that is exclusively within the province of the jury. There was no formal assent among the parties as to the amount of damages incurred by the Plaintiff. The Plaintiff did in fact offer several piecemeal items of evidence speaking to damages that the jury could freely reject. Again however, there were no preceding interrogatories which asked the jury to make a specific finding with respect to every claimed element of damages. Rather, the jury was given a blank space and unfettered discretion. Accordingly, the Plaintiff cannot pretend to know after the fact what the jury intended and cannot take issue with their fact finding when the Interrogatories leave no supportive clues. To permit the

Plaintiff to now dictate that it knows what the jury meant dangerously attempts to tamper with its unfettered discretion.

WHEREFORE, the Defendant, Logistics Plus, Inc., respectfully requests this Honorable Court to deny the Plaintiff's Motion for Judgment as a Matter of Law.

MOTION FOR NEW TRIAL

Pursuant to Federal Rule of Civil Procedure 50(c)(1), "**If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for new trial**, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial." (emphasis added) As such, if this Court denies the Plaintiff's Motion for Judgment as a Matter of Law for the reasons advanced above, then it follows that the Plaintiff's Motion for a New Trial must be denied as well. Furthermore, a new trial may not be granted merely "because the evidence was sharply in conflict, because the jury could have drawn different inferences or conclusions, or because another result is more reasonable." Shushereba v. R.B. Indus., Inc., 104 F.R.D. 524, 527 (W.D. Pa. 1985). Again as stated above, there are no preceding interrogatories which pose questions to the jury enabling them to arrive at one and only one figure. Rather, there is a blank line affording wide latitude to the jury to place a number they see fit for each defendant. Thus, the jury could have reasonably inferred that they in fact had wide latitude in placing any number they saw fit on the verdict form. The Plaintiff argues that they should have inferred something different. This is not enough however to award a new trial. Accordingly, for the aforementioned reasons advanced above, the Plaintiff's Motion for New Trial should be denied.

WHEREFORE, the Defendant, Logistics Plus, Inc., respectfully requests this Honorable Court to deny the Plaintiff's Motion for New Trial.

MOTION FOR PREJUDGMENT INTEREST

The Defendant, Logistics Plus, Inc. does not dispute the Plaintiff's ability to seek pre-judgment interest. Merely, Logistics Plus argues that such interest as it applies solely to Logistics Plus should only be calculated from November of 2003 when the Plaintiff formally issued its claim against Logistics Plus. Furthermore, said interest, if permitted shall be on the sum of $21,000.00 only.

WHEREFORE, the Defendant, Logistics Plus, Inc., respectfully requests this Honorable Court to deny the Plaintiff's Motion for Pre-Judgment Interest.

MOTION FOR RECONSIDERATION OF ATTORNEYS' FEES PURSUANT TO 49 U.S.C. §14704

The Plaintiff in an unprecedented move has asked this Honorable Court to consider the granting of attorneys' fees to the Plaintiff and against the Defendants once in a motion for summary judgment which was denied; second on a motion for reconsideration which was denied; and third on a second motion for reconsideration after the jury rendered a verdict with which it is not pleased. For the third time, the Plaintiff's motion should be denied. Nothing has changed between any of the aforementioned denials in the law or in the facts of this case other than the Plaintiff's expectations for a different jury verdict. On that basis alone, this Court should dispense with this third attempt.

However, turning briefly to the substance of the Plaintiff's argument, pursuant to 49 U.S.C. §14704, Logistics Plus again joins in the arguments advanced previously and currently by Central Transport in opposition to the Plaintiff's motion. Yes, a private party can bring private causes of action under Section 14704 to enforce the cargo loss and damage regulations proffered by the Secretary of Transportation. Hoover v. Allied Van Lines, 111 P. 3d 1076, 205 WL 1277952 (Kan. App.); Owner-Operator Independent Drivers Association, Inc. v. New Prime, Inc., 192 F.3d 778, 783-84 (8^{th} Cir. 1999). But in this case, clearly the Plaintiff's complaint does not in either Count allege that it is entitled to recover because the Defendants have violated any regulations. Rather, the two Counts merely seek to recover generally damage to freight. In the paragraphs preceding the two counts of the complaint, the Plaintiff mentions that the Defendants are required to conduct a prompt and thorough investigation of their claim. However, this information appears merely by way of background and is not the basis for the two counts/theories of liability. Moreover, no specific allegations were levied at Logistics Plus on this point, nor could the Plaintiff advance such an argument. Logistics Plus was served with formal notice of the Plaintiff's claim in November of 2003 and given 10 days to respond or the Plaintiff would file suit. Does ten days afford Logistics Plus enough time to even respond to such a claim, let alone conduct a thorough investigation? Clearly not. The Plaintiff could not reasonably expect a "prompt and thorough investigation" by Logistics Plus under such a timeline. The formal notice letter in November of 2003 of the Plaintiff's Carmack claim was a required notice, not a cue to actually conduct a thorough investigation. Therefore, even if this Court believes that the Plaintiff's two counts were somehow seeking enforcement of such regulations, such enforcement was not, nor cannot be directed at Logistics Plus.

Finally, to raise this issue now, weeks after the jury rendered its verdict when little, if any discussion or evidence was offered at trial on this point greatly prejudices the Defendants. This issue was properly addressed and dispensed with twice before trial. If the claim remained, clearly the Defendants would have addressed and vigorously contested any allegations that they violated any regulations governing the investigation of claims or any other regulations. But since the issue was not before the Court or the jury, it cannot be so now after the result is clear.

WHEREFORE, the Defendant, Logistics Plus, Inc., respectfully requests this Honorable Court to deny the Plaintiff's Motion for Reconsideration of Attorneys' Fees pursuant to 49 U.S.C. §14704.

Respectfully Submitted,

THE TRAVIS LAW FIRM

By ______________________

W. John Knox, Esquire
Travis Law Building
102 Lorna Lane
Edinboro, PA 16412

Attorneys for Defendant,
Logistics Plus, Inc.

CERTIFICATE OF SERVICE
I hereby certify that a copy of this document was served upon the U.S. District Court and all counsel of record by First Class United States Mail, Fax or by Hand Delivery/Courthouse Box on this 14th day of November, 2005.

DATED: 11/14/2005

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November 14, 2005

Honorable Sean J. McLaughlin
U.S. Courthouse
Room A250
17 South Park Row
Erie, PA 16501

Accuspec Electronic Services, Inc. v. Central Transport International, Inc. and Logistics Plus, Inc.
U.S. District Court for the Western District of Pennsylvania
Civil No. CA03-394 Erie

Dear Judge McLaughlin:

Enclosed please find the Defendant, Logistics Plus, Inc.'s Opposition to the Plaintiff's Post-Trial Motions in the above matter. Thank you for your attention to this case.

BY: ______________________
W. John Knox

CC: Clerk of Court
W. Patrick Delaney
Jeffrey Cohen
Michael Reilly